

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA v. ANDREW BASSANER VICKI BUNCHUK	CRIMINAL ACTION NO. 17-216-1, 2
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MEMORANDUM RE: MOTION OF DEFENDANTS'
TO DISMISS INDICTMENT

Baylson, J.

October 20, 2017

The Defendants in this case, Andrew Bassaner and Vicki Bunchuk, husband and wife, have been indicted on various fraud counts. Both Defendants have filed a Motion to Dismiss the Indictment based on improper presentation of the testimony before the Grand Jury which returned the Indictment.

Both the Government and the Defendants agree that the leading case on this issue of prosecutorial misconduct is Bank of Nova Scotia v. United States, 487 U.S. 250 (1988), which set a high bar to district court dismissals of indictments based on prosecutorial misconduct before the grand jury, in general. At the end of the oral argument in this case, the Court requested counsel to cite any Third Circuit or Supreme Court cases which supported the precise arguments made by the Defendants. Defendants' brief concedes that there are no such Third Circuit cases, but relies heavily on decisions in other districts or circuits, but none of them have precisely the same factual assertions of improper conduct. The defense cites decision of Judge Shapiro of this court in United States v. Breslin, 916 F. Supp. 438 (EDPA 1988), which detailed a much more serious litany of prosecutorial abuses than apply here. The Government, in its supplemental brief, brings

to the Court's attention a number of cases consistent with what the Court considers the mainstream precedents, requiring highly abusive conduct to warrant dismissal of an indictment.

Based on these cases and Court's independent review of the Grand Jury testimony, the defense motion relies on the testimony of four witnesses called before the Grand Jury: John Carothers, Scott Pruyn, John Oliver, and IRS Special Agent Norita Gehan.

As a brief summary, John Carothers was a business associate/partner of the Defendants, who had personal knowledge of how they conducted their business, and testified to various financial transactions which were relevant to the Grand Jury's consideration of whether to return an indictment against the Defendants. In the course of his testimony, Mr. Carothers became aware of the fact that Defendant Bassaner had a prior conviction for fraud, and had been sentenced to pay restitution, and was likely still on probation. This background fact, although not admissible at trial, was not necessarily improper before the Grand Jury because it indicated a series of circumstances of how Mr. Carothers became aware of the Defendants' conduct and it was part of his knowledge of the Defendants.

Another witness, Scott Pruyn, had prepared the tax returns under investigation. Defendants do not assert that Mr. Pruyn's testimony was improper, but the prosecutor cut off questions because of lack of time.

As to John Oliver, he was a tax professional who was retained by Defendants to assist them in the preparation of their books and records and tax returns. He was knowledgeable about the Defendants practices with regard to their books and records, and gave personal testimony that they were taking business deductions for what were arguably personal expenses. The fact that one of these happened to be for an on-line dating service was relevant as the type of personal expense for

which business funds were being used. None of the Defendants' assertions of misconduct was so prejudicial as to warrant dismissal of the Indictment, nor does the cumulative allegedly improper effect of the isolated instances of misconduct warrant dismissal. For these reasons, the Defendants' Motion to Dismiss the Indictment will be **DENIED**.

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ORDER

AND NOW this 20th day of October, 2017, after argument and briefing, the Defendants' Motion to Dismiss the Indictment is **DENIED**.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON
United States District Court Judge